

WISCONSIN SUPREME COURT

Justice	 Brian Hagedorn	 Patience Roggensack	 Ann Walsh Bradley	 Rebecca Bradley	 Rebecca Dallet	 Annette Ziegler	 Daniel Kelly ⁷	 Jill Karofsky
Confidence Score	Strong Republican	Indeterminate	Indeterminate	Mild Republican	Mild Democrat	Mild Republican	Strong Republican	Mild Democrat
Opinion Partners			✓		✓			
Dissenting Minority	✓		✓		✓			
Determining Majority		✓		✓		✓	✓	
Lone Dissenter								

SUMMARY

- ▶ Number of cases: **89**
- ▶ Percentage of cases with a unanimous ruling: **59.6% (53)**
- ▶ Justice most often writing the majority opinion: **Justice Brian Hagedorn (8) and Justice Rebecca Dallet (8)**
- ▶ Per curiam decisions: **43**
- ▶ Concurring opinions: **27**
- ▶ Justice with most concurring opinions: **Justice Rebecca Bradley (6) and Justice Daniel Kelly (6)**
- ▶ Dissenting opinions: **49**
- ▶ Justice with most dissenting opinions: **Justice Brian Hagedorn (9), Justice Rebecca Bradley (9), and Justice Rebecca Dallet (9)**

⁷ Justice Kelly was on the court at the beginning of 2020, but ran for a retention election in spring 2020. Justice Karofsky ran against Kelly, won, and took his seat after the election.

COURT CONTENTION

In 2020 the Wisconsin Supreme Court was one of the most contentious courts in the country. At least one justice disagreed with the majority's ruling in 28 cases, which was 34.6 percent of the time the court issued a ruling. At least one justice dissented in 50 percent of non-per curiam cases.

Opinion partners

The two justices who allied with one another most often in dissent were Ann Walsh Bradley and Rebecca Dallet. Ann Walsh Bradley and Rebecca Dallet dissented together seven times, which was 54.5 percent of all cases with more than one dissent. Justice Ann Walsh Bradley only dissented in cases in which Dallet was also a dissenter in 2020. In our *Ballotpedia Courts: State Partisanship* study, Justice Dallet recorded a Mild Republican Confidence Score and Justice Ann Bradley recorded an Indeterminate Confidence Score. Justices Rebecca Bradley and Roggensack allied with one another in dissent four times, Rebecca Bradley and Daniel Kelly allied with one another in dissent five times, and Annette Zeigler and Patience Roggensack allied with one another in dissent three times in 2020.

Dissenting minority

In 2020, the Wisconsin Supreme Court decided twelve cases 4-3. The group of three justices who allied with one another most often in dissent were Brian Hagedorn, Ann Walsh Bradley, and Rebecca Dallet. Ann Walsh Bradley, Hagedorn, and Dallet dissented in the same case four times, which was 30 percent of all cases in which three justices dissented. In our *Ballotpedia Courts: State Partisanship* study Justice Hagedorn recorded a Strong Republican Confidence Score, Justice Ann Walsh Bradley recorded an Indeterminate Confidence Score and Justice Dallet recorded a Mild Democratic Confidence Score.

Determining majority

In six of the twelve 4-3 cases, Justices Roggensack, Rebecca Bradley, and Zeigler allied in the majority. In five of those cases Justice Kelly joined them. In our *Ballotpedia Courts: State Partisanship* study, Justice Roggensack recorded an Indeterminate Confidence Score, Justice Bradley Rebecca Bradley recorded a Mild Republican Confidence Score, Justice Zeigler recorded a Mild Republican Confidence Score, and Justice Kelly recorded a Strong Republican Confidence Score.

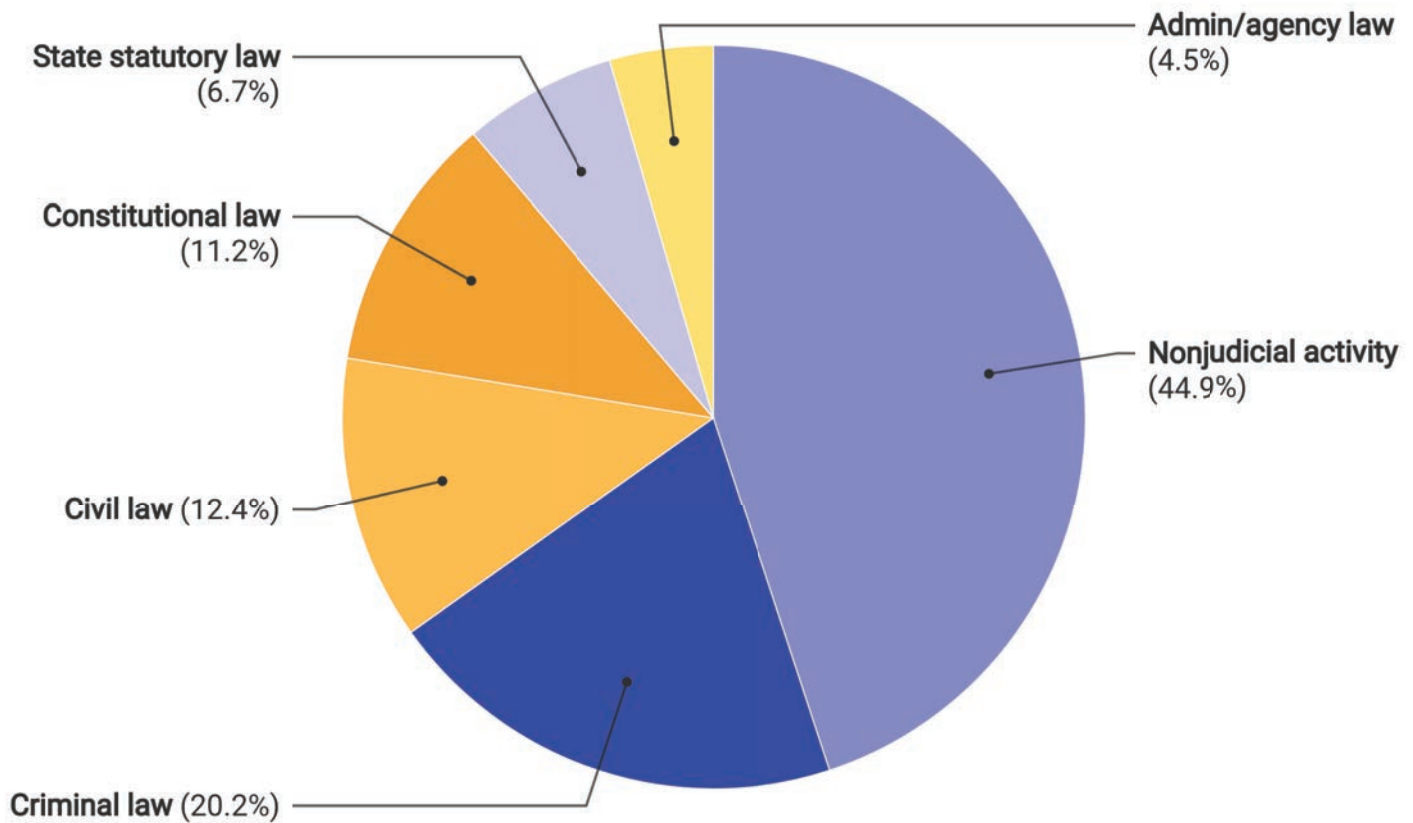
Lone dissenter

In 2020, Justices Dallet and Hagedorn dissented alone twice, which was more than any other justices on the Wisconsin Supreme Court. In seven cases heard by the Wisconsin Supreme Court in 2020 there was a lone dissenter. Justices Kelly, Roggensack, and Rebecca Bradley were each lone dissenters once in 2020.

COURT JURISDICTION

The supreme court has *jurisdiction* over original actions, appeals from lower courts, and regulation or administration of the practice of law in Wisconsin. Most commonly, the supreme court reviews cases that were appealed from the court of appeals.

Case types decided by Wisconsin Supreme Court, 2020



BALLOTPEDIA

The most common cases heard by the Wisconsin Supreme Court in 2020 were nonjudicial activity. Of the 89 cases it heard, 40 were nonjudicial activity cases, which was 44.9 percent of its caseload for the year. A case is considered nonjudicial activity if it does not involve a formal hearing and discussion before the court.

The second most common cases that reached the supreme court were criminal cases. A criminal case involves a final criminal appeal before the court of last resort. The Wisconsin Supreme Court heard 18 criminal cases in 2020, or 20.2 percent of its total caseload for the year.

The third most common cases that reached the court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Wisconsin Supreme Court heard 11 civil cases in 2020, or 12.4 percent of its total caseload for the year.

PROMINENT CASES

Wisconsin Legislature v. Palm

Justice	Brian Hagedorn	Patience Roggensack	Ann Walsh Bradley	Rebecca Bradley	Rebecca Dallet	Annette Ziegler	Daniel Kelly
Office of Lawyer Regulation v. Palm	Writing a dissenting opinion	Writing majority opinion	Writing a dissenting opinion	Writing a concurring opinion	Writing a dissenting opinion	Joining majority opinion	Writing a concurring opinion

- ◆ **Contention:** Justice Roggensack wrote the majority opinion and also filed a concurring opinion. Justice Rebecca Bradley filed a concurring opinion and was joined by Justice Kelly. Justice Kelly filed a concurring opinion and was joined by Justice Rebecca Bradley. Justice Ann Bradley wrote a dissenting opinion and was joined by Justice Dallet. Justice Dallet wrote a dissenting opinion and was joined by Justices Ann Bradley and Hagedorn. Justice Hagedorn wrote a dissenting opinion and was joined by Justices Ann Bradley and Dallet in part.
- ◆ **Summary:** On March 12, 2020, Gov. Tony Evers (D) issued Executive Order 72 proclaiming that a public health emergency existed in Wisconsin and directed DHS to take “all necessary and appropriate measures” to prevent incidents of COVID-19 in the State. On March 24, Palm, as secretary-designee of the Department of Health Services, issued Emergency Order 12 ordering Wisconsin citizens to stay at home. On April 16, Palm issued Emergency Order 28 ordering individuals to stay at home or risk punishment. The Wisconsin Legislature brought an emergency petition for original action asserting that Palm failed to follow emergency rulemaking procedures required under Wis. Stat. 227.24. The Supreme Court held (1) Emergency Order 28 is a “rule” under Wis. Stat. 227.01(13); (2) because Palm did not follow rulemaking procedures during Order 28’s promulgation, there could be no criminal penalties for violations of her order; and (3) Palm’s order further exceeded the statutory authority of Wis. Stat. 252.02.
- ◆ **Majority opinion:** Justice Roggensack wrote: “Emergency Order 28 is a general order of general application within the meaning of Wis. Stat. § 227.01(13) which defines “Rule.” Accordingly, the rulemaking procedures of Wis. Stat. § 227.24 were required to be followed during the promulgation of Order 28. Because they were not, Emergency Order 28 is unenforceable.” (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 31 (Wis. 2020))
- ◆ **Justice Rebecca Bradley’s concurring argument:** Justice Rebecca Bradley wrote: “Under the Wisconsin Constitution, all governmental power derives ‘from the consent of the governed’ and government officials may act only within the confines of the authority the people give them. Wis. Const. art. I, § 1. The people of Wisconsin never consented to any elected official, much less an unelected cabinet secretary, having the power to create law, execute it, and enforce

it. '[E]ver vigilant in averting the accumulation of power by one body—a grave threat to liberty—the people devised a diffusion of governmental powers' among three branches of government. *Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, ¶60, 376 Wis. 2d 147, 897 N.W.2d 384. Whenever any branch of government exceeds the boundaries of authority conferred by the people, it is the duty of the judicial branch to say so." (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 1 (Wis. 2020))

- ◆ **Justice Kelly's concurring argument:** Justice Kelly wrote: "The Order may be a brilliantly conceived and executed response to COVID-19. Or maybe it's not. Either way, that is not the question before the court. Brilliance does not confer authority. Nor does necessity. Our only task in this case was to determine whether Secretary Palm has the authority to issue the Order. We had an unavoidable, non-discretionary, obligatory responsibility to decide that question. And so we have. Because I agree with that declaration, I join the court's opinion. I wrote separately because it is important to establish that, if we agreed with the Secretary's reading of Wis. Stat. § 252.02, we would have to conclude the statute violated the separation of powers by conferring on the Secretary the power to make laws without going through the rule-making process." (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 23-24 (Wis. 2020))
- ◆ **Justice Hagedorn's dissenting argument:** Justice Hagedorn wrote: "The legislature asks in the alternative that we address whether Order 28 goes beyond the statutory powers DHS has been granted in Wis. Stat. § 252.02. But the legislature has not alleged, nor can I identify, any harm to the legislature as a constitutional body for which this court can grant relief. Executive branch overreach may be challenged by those who are harmed by the executive branch action. Except in unusual cases, the lawmaking body is not injured in its lawmaking functions by executive branch enforcement gone awry. Therefore, the legislature lacks standing to bring this claim, and it should be dismissed." (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 51 (Wis. 2020))
- ◆ **Justice Ann Bradley's dissenting argument:** Justice Ann Bradley wrote: "Given the admonition of Dr. Fauci, I fail to see the wisdom or the equity in invalidating Emergency Order 28 and, at least for the time being, leaving nothing in its stead. Accordingly, I dissent." (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 3 (Wis. 2020))
- ◆ **Justice Dallet's dissenting argument:** Justice Dallet wrote: "It is clear that a majority of this court has no appreciation of the consequences of doing the Legislature's bidding in the midst of a pandemic. The Legislature has always had the power to act, but would rather ask this court to do so to avoid political fallout. Unfortunately for Wisconsinites, this court took the bait." (*Wisconsin Legislature v. Palm*, No. 2020AP765-OA, 19 (Wis. 2020))

Hawkins v. Wisconsin Elections Commission

Justice	Brian Hagedorn	Patience Roggensack	Ann Walsh Bradley	Rebecca Bradley	Rebecca Dallet	Annette Ziegler	Jill Karofsky
Hawkins v. Wisconsin Elections Commission	Joining per curiam opinion	Writing a dissenting opinion	Joining per curiam opinion	Writing a dissenting opinion	Joining per curiam opinion	Writing a dissenting opinion	Joining per curiam opinion

- ◆ **Contention:** The opinion written by the court was a per curiam opinion. Justice Annette Ziegler wrote a dissenting opinion. Chief Justice Patience Roggensack wrote a dissenting opinion. Justice Rebecca Bradley wrote a dissenting opinion.
- ◆ **Summary:** Petitioners were the Green Party's candidates for President and Vice President of the United States. Because the Commission failed to certify at least 2,000 valid signatures, Petitioners filed a petition for leave to commence an original action and a motion for temporary injunctive relief asking that the Supreme Court order that their names be placed on Wisconsin's 2020 fall general election ballot. The Supreme Court denied relief, holding (1) Petitioners delayed seeking relief and hundreds of absentee ballots had already been mailed to electors; and (2) therefore, the Court declined to exercise its original jurisdiction due to the lack of sufficient time to complete its review and award any effective relief without completely upsetting the election.
- ◆ **Per curiam argument:** The per curiam opinion reads, "Even if we would ultimately determine that the petitioners' claims are meritorious, given their delay in asserting their rights, we would be unable to provide meaningful relief without completely upsetting the election. We agree with the Commission that requiring municipalities to print and send a second round of ballots to voters who already received, and potentially already returned, their first ballot would result in confusion and disarray and would undermine confidence in the general election results. Under the circumstances presented here, it would be unfair both to Wisconsin voters and to the other candidates on the general election ballot to interfere in an election that, for all intents and purposes, has already begun. For these reasons, we determine that the best exercise of our discretion is to deny the petitioners' petition for leave to commence an original action and motion for temporary injunctive relief." (*Hawkins v. Wisconsin Elections Commission*, No. 2020AP1488-OA, 8 (Wis. 2020))
- ◆ **Zeigler's dissenting argument:** Justice Zeigler wrote, "The majority failed this state's and this country's election process. The majority's decision does more than just misread the law and misapply the facts. It deprives the Wisconsin people of a voice and strips them of one of the most fundamental tenets of this republic: the right to express one's will at the ballot box. But come November, important swaths of this state's electorate will go unheard. And for what purpose? To reward the Commission for its missteps and to deny

the State of Wisconsin political choice? For the majority, apparently so. When Wisconsin electors signed the Green Party's nomination papers for President and Vice President of this country, what were they signing? Perhaps, as the majority seemingly endorses, they were signing their approval of Angela Walker's address in South Carolina. Or perhaps it was something more. Perhaps they were signing on behalf of their right to vote for a candidate of their choice, and to exercise one of their most important liberties that a democratic country can offer." (*Hawkins v. Wisconsin Elections Commission*, No. 2020AP1488-OA, 46 (Wis. 2020))

- ◆ **Roggensack's dissenting argument:** Justice Roggensack wrote, "It has been said that transparency is the best medicine for curbing governmental practices that abuse the rights of those who must interact with government. The Commission ignored its legal obligations under Wis. Admin. Code §§ EL 2.05(4) and EL 2.07(3)(a), and in so doing it suppressed the rights of voters to choose Green Party candidates for President and Vice President. The court's Order is silent on the Commission's unlawful conduct and imposes no consequences for what it has done. The court's silence not only affirms lawless conduct by the Commission, but also provides no directive for the required treatment of nomination papers in the future." (*Hawkins v. Wisconsin Elections Commission*, No. 2020AP1488-OA, 14 (Wis. 2020))
- ◆ **Rebecca Bradley's dissenting argument:** Justice Rebecca Bradley wrote, "The majority pretends the court lacks "sufficient time to complete our review and award any effective relief." What nonsense. Wisconsin law unquestionably requires that Mr. Hawkins and Ms. Walker appear on the ballot. The court could have ordered their certification as candidates before any ballots were mailed to voters. Instead, the court refuses to perform its duty to faithfully apply the law and allows the Wisconsin Elections Commission to flout it, thereby signaling to the WEC that it may disregard the law at whim, with no accountability to the people for its transgressions. In dodging its responsibility to uphold the rule of law, the majority ratifies a grave threat to our republic, suppresses the votes of Wisconsin citizens, irreparably impairs the integrity of Wisconsin's elections, and undermines the confidence of American citizens in the outcome of a presidential election. I dissent." (*Hawkins v. Wisconsin Elections Commission*, No. 2020AP1488-OA, 49 (Wis. 2020))

Trump v. Biden

Justice	Brian Hagedorn	Patience Roggensack	Ann Walsh Bradley	Rebecca Bradley	Rebecca Dallet	Annette Ziegler	Jill Karofsky
Trump v. Biden	Writing majority opinion	Writing a dissenting opinion	Joining majority opinion	Writing a dissenting opinion	Writing a concurring opinion	Writing a dissenting opinion	Writing a concurring opinion

- ◆ **Contention:** Justice Hagedorn wrote the majority opinion. Justice Ann Bradley joined the majority opinion. Justice Roggensack wrote a dissenting opinion. Justice Rebecca Bradley wrote a dissenting opinion. Justice Zeigler wrote a dissenting opinion. Justice Dallet wrote a concurring opinion. Justice Karofsky wrote a concurring opinion.
- ◆ **Summary:** The Supreme Court rejected Donald Trump's effort to invalidate 220,000 votes from Dane and Milwaukee Counties in the 2020 presidential election. The petitioner brought action seeking to invalidate the ballots due to four different objections, applying only to Dane and Milwaukee Counties. Among those challenged ballots were ballots cast by voters who claimed indefinitely confined status since March 25, 2020. The Supreme Court concluded that the Petitioners were not entitled to the requested relief, holding (1) the challenge to the indefinitely confined voter ballots was meritless on its face; and (2) the other three categories of challenged ballots failed under the doctrine of laches.
- ◆ **Majority argument:** Justice Hagedorn wrote, "The Campaign waited until after the election to raise selective challenges that could have been raised long before the election. We conclude the challenge to indefinitely confined voter ballots is without merit, and that laches bars relief on the remaining three categories of challenged ballots. The Campaign is not entitled to relief, and therefore does not succeed in its effort to strike votes and alter the certified winner of the 2020 presidential election." (*Trump v. Biden*, No. 2020AP2038, 17 (Wis. 2020))
- ◆ **Justices Dallet and Karofsky's concurring argument:** Justices Dallet and Karofsky wrote a concurring opinion together, and wrote, "As acknowledged by the President's counsel at oral argument, the President would have the people of this country believe that fraud took place in Wisconsin during the November 3, 2020 election. Nothing could be further from the truth. The President failed to point to even one vote cast in this election by an ineligible voter; yet he asks this court to disenfranchise over 220,000 voters. The circuit court, whose decision we affirm, found no evidence of any fraud." (*Trump v. Biden*, No. 2020AP2038, 1 (Wis. 2020))
- ◆ **Justice Roggensack's dissenting argument:** Justice Roggensack wrote, "The Milwaukee County Board of Canvassers and the Dane County Board of Canvassers based their decisions on erroneous advice when they concluded that changes clerks made to defective

witness addresses were permissible. And, the Dane County Board of Canvassers erred again when it approved the 200 locations for ballot collection that comprised Democracy in the Park. The majority does not bother addressing what the boards of canvassers did or should have done, and instead, four members of this court throw the cloak of laches over numerous problems that will be repeated again and again, until this court has the courage to correct them. The electorate expects more of us, and we are capable of providing it. Because we do not, I respectfully dissent.” (*Trump v. Biden*, No. 2020AP2038, 18 (Wis. 2020))

- ◆ **Justice Rebecca Bradley’s dissenting argument:** Justice Rebecca Bradley wrote, “Once again, the majority of the Wisconsin Supreme Court wields the discretionary doctrine of laches as a mechanism to avoid answering questions of law the people of Wisconsin elected us to decide. Although nothing in the law compels its application, this majority routinely hides behind laches in election law cases no matter when a party asserts its claims. Whether election officials complied with Wisconsin law in administering the November 3, 2020 election is of fundamental importance to the voters, who should be able to rely on the advice they are given when casting their ballots. Rather than fulfilling its duty to say what the law is, a majority of this court unconstitutionally converts the Wisconsin Elections Commission’s mere advice into governing “law,” thereby supplanting the actual election laws enacted by the people’s elected representatives in the legislature and defying the will of Wisconsin’s citizens. When the state’s highest court refuses to uphold the law, and stands by while an unelected body of six commissioners rewrites it, our system of representative government is subverted.” (*Trump v. Biden*, No. 2020AP2038, 1 (Wis. 2020))
- ◆ **Justice Ziegler’s dissenting argument:** Justice Zeigler wrote, “The majority’s decision not to address the merits suffers from an even more insidious flaw—it places the will of this court and the will of the Wisconsin Elections Commission above the express intent of the legislature. The majority uses the potential remedy, striking votes, as an equitable reason to deny this case. Majority op., ¶31. But the majority ignores that the legislature specifically set forth a remedy that absentee ballots cast in contravention of the statute not be counted. See Wis. Stat. § 6.84(2). When the law is not followed, the counting of illegal ballots effectively disenfranchises voters. This past election, absentee voting was at an extraordinarily high level. Perhaps this is why it mattered more now than ever that the law be followed. Also this might explain why the process has not been objected to before in the form of a lawsuit like this one. The majority gives virtually no consideration to this fact.” (*Trump v. Biden*, No. 2020AP2038, 14 (Wis. 2020))